

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	DOCKET NO.: 20-cr-10176-PBS
v.)	
)	<i>LEAVE TO FILE UNDER SEAL</i>
PAUL WHOOTEN)	<i>GRANTED ON 6/16/23</i>
)	

DEFENDANT’S SENTENCING MEMORANDUM

On December 21, 2019, Paul Whooten entered Rockland Trust Bank in Hyde Park, Massachusetts while under the influence of benzodiazepines (depressant that produces sedation or “downers”). He made a demand for money from a teller and walked out of the bank with a little over \$13,000.00 dollars. He was arrested minutes later only a short distance away. As will be explained in more detail in this memorandum, Mr. Whooten was struggling tremendously in the days and weeks leading up to the robbery due to a combination of chronic mental health problems and related drug abuse. These have been the root causes of most, if not all, of his criminal history and they have never been adequately addressed through treatment.

It is only now, after years of trial and error, that he has a clear-eyed understanding of why he has acted in the manner he has in the past. He has a sober appreciation of the harm he has caused in committing this robbery. He truly regrets his actions and is now able to see his past with from a different perspective. After a long and difficult period in pretrial custody (two and half years), with the correct substance abuse and mental health treatment, he has finally had a chance to create a blueprint for future success. He genuinely wants to change the trajectory of his life after so many years of turmoil, focus on his beloved family, and asks this Court for the opportunity to demonstrate and achieve those changes.

For the reasons that follow, Mr. Whooten seeks a sentence of seventy (70) months’

imprisonment with three years of supervised release, which he submits is sufficient, but not greater than necessary, to achieve the purposes of sentencing set forth in 18 U.S.C. § 3553(a). The proposed sentence is within the applicable sentencing guidelines range, appropriately reflects the nature and seriousness of the offense, his personal history, his meaningful progress with drug and mental health treatment, and is mindful that Mr. Whooten spent the entirety of the COVID-19 pandemic in pretrial custody.

Background: Why does this keep happening?

On March 15, 2019, Paul Whooten (“Paul”) was released from federal custody back into the community. *See* Presentence Report (“PSR”) ¶ 41. Paul had served a lengthy sentence on a state robbery case and then spent an additional year in federal custody due to a supervised release violation. PSR ¶¶ 41, 42. Since 1999, he has served close to twenty years in total in both the Massachusetts state and federal prison systems due to robbery convictions. Sadly, that time in custody did absolutely nothing to help him discover the real reasons why he continued to engage in this behavior.

What this extended incarceration did do was to further traumatize a man that had suffered immeasurably in the prison system already. From being sexually abused by an adult inmate at the age of 17 at the old Deer Island jail facility here in Massachusetts to the horrific violence he was exposed to on a daily within the federal Bureau of Prisons (“BOP”), true rehabilitation was nowhere to be found. *See* Exhibit A, Aid in Sentencing Evaluation, pp. 4, 5. These experiences caused damage to Paul’s mental state. This was manifested through behaviors he carried on outside of custody such as hyper-vigilance to protect himself (sleeping while sitting up to avoid being attacked). He also felt tremendous anxiety when put into situations such as crowded places.

This was the frail state of mind of the man that who was finally released from jail in March of 2019. Despite this potential obstacle, Paul did manage to accomplish positive things during the close to ten months that he was in the local community prior to his arrest in this case. He was not on probation supervision of any kind at this time and, to his credit, he did such things as enrolling for studies at Bunker Hill Community College. *Id.* at pp. 6, 7. He was accepted for paralegal education and had received financial assistance from the Massachusetts Rehabilitation Commission with the assistance of a college administrator named Linda Johnson. *Id.* He also utilized resources in the community to apply for Section 8 housing which he was waiting for approval for prior to his arrest in this matter.

In addition, Paul made efforts to address his substance use by securing a prescription to receive ████████ treatment regularly. This was critical for him. Lastly, he was working on obtaining appropriate mental health treatment at Boston Medical Center (“BMC”) with the assistance of a nurse practitioner named Theresa Weir. This was the one part of Paul’s commendable effort to improve his life that, unfortunately, did not work out for him. While at BMC, he was being treated with medication for the wrong mental disorder. This was the missing piece of the puzzle that ultimately contributed to his committing another robbery in December of 2019.

As Paul felt that his mental condition was not improving with the treatment he had been getting after his arrest in this case, he agreed to meet with Dr. Caleb Newman-Polk for a psychological evaluation. Paul had been receiving medication for anxiety, as he had while at BMC, at the Wyatt Detention Facility (“Wyatt”). Dr. Newman-Polk’s work on this case (including a thorough review of voluminous treatment records from BMC and the Adult Correctional Institution (“ACI”) in Rhode Island) led to a startling realization: Paul’s feelings of

debilitating anxiety had been misinterpreted for years by treatment providers. [REDACTED]

[REDACTED]

[REDACTED]

This conclusion was reinforced after Dr. Newman-Polk interviewed Paul's daughter, Bonnie Whooten. She vividly described that her father would periodically experience spikes in his energy level that would cause him to clean the house frantically or engage in other activities in an almost compulsive manner. [REDACTED]

[REDACTED].

For years he had been treated for anxiety with medications [REDACTED] but they were only addressing a portion of the problem. *Id.* In fact, Paul had been prescribed [REDACTED] during the weeks prior to the bank robbery in this case and he was taking the medication incorrectly. He was ingesting more than the dosage prescribed to try to counteract his anxious feelings and it was ultimately more harmful than helpful. *Id.* He was trying to manage his manic episodes with copious amounts of the wrong medication and then resorted to supplementing it with drugs [REDACTED]. This was the mixture of drugs he had been taking in the days leading up to the robbery in December of 2019.

Defense counsel shared Dr. Newman-Polk's evaluation report with medical personnel at Wyatt in April of 2023 and this has been incredibly helpful to treatment providers. After the last hearing in this case where the Court had an opportunity to observe Paul in person, Wyatt received this information and made an appointment for him to see the visiting psychiatrist. In short order, his medication was adjusted to address [REDACTED]. Paul's mental state has improved markedly since that time. Dr. Newman-Polk's recommendations have started Paul on a path to recovery that will allow him to break the cycle of criminal behavior that has plagued him

for so many years.

ARGUMENT

A 70-MONTH SENTENCE IS SUFFICIENT BUT NOT GREATER THAN NECESSARY TO ACHIEVE 18 U.S.C. § 3553(a)'s SENTENCING GOALS

As the First Circuit stressed, “section 3553(a) is more than a laundry list of discrete sentencing factors; it is, rather, a tapestry of factors, through which runs the thread of an overarching principle.” *United States v. Yonathan Rodriguez*, 527 F.3d 221, 228 (1st Cir. 2008) (citing *Kimbrough v. United States*, 552 U.S. 85, 101 (2007)). That overarching principle is to “impose a sentence sufficient but not greater than necessary.” *Id.* In reaching a decision on what constitutes an appropriate sentence, the district court should “consider all the relevant factors” and “construct a sentence that is *minimally sufficient* to achieve the broad goals of sentencing.” *Id.* (emphasis added). A 70-month sentence will provide punishment that is sufficient but no greater than necessary to achieve the statutory purposes of sentencing.

Guidelines Calculation

While the Court is required to compute the Guideline Sentencing Range as a “starting point and the initial benchmark,” the Guidelines are not the sole, nor even the first among the factors that Congress has commanded the courts to apply in section 3553(a). Indeed, “the Guidelines are only one of the factors to consider when imposing a sentence and 3553(a)(3) directs the judge to consider sentences other than imprisonment.” *Gall v. United States*, 552 U.S. 38, 59 (2007).

Here, Paul agrees with the calculation of the guidelines as expressed in the PSR. Under U.S.S.G. § 2B3.1, his base offense level is 20. PSR ¶ 16. With a two-level enhancement under § 2B3.1(b)(1) as the property of a financial institution was taken, a four-level enhancement under 2B3.1(b)(2)(D) as a BB gun rifle was used during the offense conduct, and after adjusting for

acceptance of responsibility under U.S.S.G. § 3E1.1(a), Paul's adjusted total offense level is 23. PSR ¶¶ 16, 17, 18, 22-26. With a criminal history category IV, the resulting advisory sentencing range is 70 to 87 months imprisonment. PSR pg. 24.

Family ties and Medication Assisted Treatment ("MAT"): Why this will not happen again.

Paul's younger sister, Laura O'Hea, and his daughter Bonnie Whooten have always been his main sources of support. They have been communicating with him regularly while he has been in custody and are extremely concerned about the outcome of this case. *See* Exhibit B, Letter of Support. Laura has witnessed all of Paul's struggles over the years and has tried mightily to take care of him whenever possible. She recalls Paul being traumatized as a teenager after having survived his first stint in jail at Deer Island. *See* Exhibit A. He never shared the details with her but she knew he had suffered while there. Laura has seen, firsthand, the mental health and substance abuse problems that have followed him for most of his adult life. She cares for him very much, will always be there if he needs her, and wants nothing more than for him to live a peaceful and healthy life outside of prison.

Daughter Bonnie Whooten and her family are Paul's pride and joy. *See* Exhibit B. Her husband of 17 years and their three children are also supportive of him and miss his presence in their lives. *Id.* Paul speaks tearfully of his grandchildren and has cherished the time he has been able to spend with them as a doting grandfather. *Id.* Being away from them since his arrest in 2019 on this case has been very painful and they are concerned for his wellbeing while he is in custody.

As discussed earlier in this memorandum, Bonnie Whooten was critical in helping Dr. Newman-Polk correctly assess Paul's mental health situation. She has experienced and been

treated for mental health issues of her own and always suspected that her father was suffering from a similar condition. *Id.* She knows and loves the father and grandfather (“Pappa”) that her children literally cling to. *Id.* Along with his occasional manic/depressive episodes, she has also seen him during periods in 2019 where he was calm, attentive, and helpful to her family. She is now hopeful that his condition will improve with the right medications in place to address his bipolar disorder. Ms. Whooten has also seen that her father’s past abuse of drugs has a direct connection to his misdiagnosed mental health condition. It has always been an attempt to self-medicate when prescribed drugs did not correct the problem.

Paul’s recent, consistent, participation with medication assisted treatment (“MAT”) at Wyatt is the second critical piece to minimizing his potential recidivism. Dr. Fisher is affiliated with the CODAC program that administers MAT for opioid dependence at Wyatt. Over the months, he has worked with Paul closely and communicated to defense counsel personally that Paul has taken full advantage of the program and is a pleasure to work with. Dr. Fisher speaks highly of Paul as a person and wanted to relay to this Court that he is flourishing in the program and has acted as a source of support to other inmates who are coming into this treatment at Wyatt. *See* Exhibit C, MAT treatment letter.

It is crucial that Paul continue with MAT while in BOP custody. Dr. Fisher recommends that the Court order as a part of its judgment that he receive Subutex treatment while in the BOP system. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Paul has been doing extremely

well with Subutex and has implored defense counsel to assure that the Court order it to continue while he is in BOP custody. Paul's family and MAT treatment, [REDACTED], [REDACTED], are the collective remedy that will prevent his involvement with robberies in the future. Laura O'Hea and Bonnie Whooten want this Court to understand that Paul is a good and responsible person when not afflicted [REDACTED]. [REDACTED].

Rehabilitation, Punishment, and Deterrence

The proposed sentence of 70 months' imprisonment and three years' supervised release serves and fulfills the sentencing goals of deterrence and just punishment and is a considerable penalty that adequately reflects the seriousness of the offenses.

The incredibly harsh and isolating circumstances of imprisonment over the course of the last two and a half years due to the COVID-19 pandemic have deeply impacted Paul. They have undoubtedly been a substantial penalty on their own. His pretrial detention has been vastly different and much more difficult than for those who were sentenced before the pandemic. This unprecedented form of restrictive confinement warrants consideration in sentencing.

Further, Paul contracted COVID-19 while in custody during the early portion of the pandemic and was literally terrified given his age and documented physical problems. PSR ¶¶ 78-84. The vaccinations and antiviral treatments available today either did not exist at that time or were not readily accessible. Further, in addition to the stress of maintaining his physical health, the pandemic inflicted mental damage on those held in prison facilities. The COVID-19 related restrictions during his time in custody exacerbated Paul's untreated bipolar disorder. This was primarily due to repeated lockdowns equivalent to being held in solitary confinement. In addition, he was not allowed to have visits from family for months and that made him feel even

more isolated. Although conditions have certainly improved since 2019, Paul suffered through the bulk of the pandemic when they were at their uncontested worst.

A 70-month guidelines sentence imposed in the immediate aftermath of a global pandemic would achieve both specific and general deterrence. It is a lengthy sentence, made harsher given the conditions described above. Moreover, the term and any special conditions of supervised release in this case can further ensure not only monitoring of Paul for three years after his release from incarceration, but also provide for meaningful deterrence and accountability with consequences for any non-compliance or reoffending. Now that he understands how to correctly treat his bipolar disorder and has addressed his drug use through MAT, Paul submits that an RRC placement and the terms and conditions of supervised release – specifically those requiring him to engage in drug and mental health treatment – can better achieve the sentencing goals of deterrence and rehabilitation than a longer, above guidelines, incarcerated sentence. A guidelines sentence is appropriate under the circumstances given the decreased likelihood of recidivism in this case if Dr. Newman-Polk’s recommendations are followed.

Sentencing Disparities

The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct is codified in 18 U.S.C. § 3553(a)(6). The U.S. Sentencing Commission provides some limited data of dispositions for defendants whose primary guideline was U.S.S.G. § 2B3.1: in the last five fiscal years (2017-2021), 60 offenders with Paul’s same criminal history category (IV) and offense level (23) were sentenced in federal court.¹ The *median* sentence imposed was 70 months, which is the low end of the applicable

¹ See U.S. Sentencing Com’n, Judiciary Sentencing Information data for Primary Guideline § 2B3.1 at cell IV, 23, [USSC - JSIN](#). This total number of offenders excludes those who received a §5K1.1 substantial assistance departure.

advisory guideline sentencing range (“GSR”) in his case.² Notably, this data does not take the defendants’ race, mental health history, background or other mitigating factors into account. As a result, it may be difficult for the Court to draw easy comparisons between those cases and this one. However, where the data does reflect that below 6 percent of all offenders sentenced under Paul’s GSR in the last five years received an upward departure and/or upward variance, his request for 70 months is supported.³

CONCLUSION

The proposed sentence of 70 months is sufficient but not greater than necessary to achieve the goals of sentencing. *See* 18 U.S.C. § 3553(a). The request is within the properly calculated GSR, aligns with sentencing statistics kept by the U.S. Sentencing Commission, and as of the date and time of the filing of this memorandum, there has been no request or basis presented for a variant sentence by the government. *See* 18 U.S.C. § 3553(b)(1); Fed. R. Crim. Procedure 32 (h). Such a sentence would be unsupported by the facts presented above and the Court would need to give the defendant notice in advance of sentencing if it was considering a sentence outside the GSR. *Id.*

Respectfully submitted,

/s/ Oscar Cruz, Jr.

Oscar Cruz, Jr.

BBO #: 680122

Federal Defender Office

Temporary Mailing Address:

P.O. Box 51268

Boston, MA 02205

Tel: 617-223-8061

June 21, 2023

² *Id.*

³ Federal Rule of Criminal Procedure 32(h) states that before the Court can depart from the applicable GSR on a ground not identified for departure either in the PSR or in a party’s prehearing submissions, the Court must give the parties reasonable notice that it is contemplating such a departure and specify any ground upon which it is considering doing so. *See also*, 18 U.S.C. § 3553(b)(1).

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 21, 2023.

/s/ Oscar Cruz, Jr.
Oscar Cruz, Jr.